This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 10/31/02.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
PRENTISS K. SULLIVAN,	)	
	)	
Complainant,	)	
	)	**Charge No.: 1999CF1587**
and	)	**EEOC No.: 21B990884**
	)	**ALS No.: 11333**
CENTERS FOR NEW HORIZONS, INC.,	)	
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

On July 27, 2000, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Prentiss K. Sullivan. That complaint alleged that Respondent, Centers for New Horizons, Inc., discriminated against Complainant on the basis of his sex and unlawfully retaliated against him when it discharged him.

This matter now comes on to be heard on Respondent's Motion for Summary Decision. Complainant has filed a written response to the motion, and Respondent has filed a written reply to that response. The matter is now ready for decision.

FINDINGS OF FACT

The following facts were derived from uncontested sections of the pleadings or from uncontested sections of the affidavits and other documentation submitted by the parties. The findings did not require, and were not the result of, credibility

determinations. All evidence was viewed in the light most favorable to Complainant.

1. Respondent, Centers for New Horizons, Inc., is a not-for-profit organization that provides educational, child development, human services, advocacy, and community and economic development programs to residents on the near south side of Chicago.

2. Respondent's operations are funded largely by contracts and grants from private foundations and from government entities such as the City of Chicago and the State of Illinois.

3. Respondent hired Complainant, Prentiss K. Sullivan, in March of 1990. Complainant, who is male, worked as a program manager in Respondent's self-reliance program.

4. Complainant worked at Altgeld Gardens until mid-1997, when he was transferred to the Wells housing project. After that transfer, Complainant's office was located at the Wells Community Initiative (WCI).

5. Complainant's basic job duties were to recruit, counsel, and mentor young adults in the community. The point of the program was to keep the young people in school, keep them off drugs, and prepare them for employment.

6. In both 1998 and 1999, the contract between Respondent and the City of Chicago required Complainant's program to serve 60 young people per year and to have at least 60% of those young adults attend at least eight months of the program.

7. For 1999, Respondent was required to enroll twenty clients in Complainant's program during the first quarter of the year.

8. Respondent's contracts with the City of Chicago required that Respondent provide appropriate documentation of the services provided.

9. When Complainant transferred to WCI, the director of WCI was Judith Walker.

10. In July of 1998, the City of Chicago audited Complainant's program and determined that the program was not in compliance with the controlling contract.

11. In January of 1999, the City of Chicago determined that Complainant's program had "never operated during the contract year."

12. After his transfer to WCI, Complainant was the only person who worked on his program.

13. In early January, 1999, Ethelyn Taylor became Complainant's immediate supervisor.

14. When Taylor asked Complainant to show her his program's records and files, he told her that he had no records and did no work.

15. On January 29, 1999, Judith Walker recommended that Complainant be discharged. Jamel Magee, Respondent's human resources administrator, overruled that recommendation. Magee noted that Complainant had been with Respondent for years and she

wanted to give him some time to adjust to his new supervisor.

16. On January 14, 1999, Complainant filed a charge of discrimination with the Illinois Department of Human Rights (IDHR). That charge alleged that Respondent had discriminated against Complainant in the terms and conditions of his employment on the basis of his sex.

17. On March 12, 1999, Respondent discharged Complainant. Complainant subsequently amended his charge of discrimination to allege sex discrimination and retaliation in regard to the discharge.

18. On July 6, 2000, IDHR dismissed Complainant's claim regarding unequal terms and conditions of employment. Complainant did not appeal that dismissal.

CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" as defined by section 1-103(B) of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (hereinafter "the Act").

2. Respondent is an "employer" as defined by section 2-101(B)(1)(a) of the Act and is subject to the provisions of the Act.

3. Complainant cannot establish a *prima facie* case of sex discrimination against him.

4. Complainant can establish a *prima facie* case of retaliation against him.

5. Respondent can articulate a legitimate, non-

discriminatory reason for discharging Complainant.

6. There is no genuine issue of material fact on the issue of pretext, and Respondent is entitled to a recommended order in its favor as a matter of law on all of the claims raised in the complaint.

7. A summary decision in Respondent's favor is appropriate in this case.

DISCUSSION

This matter is being considered pursuant to Respondent's Motion for Summary Decision. A summary decision is analogous to a summary judgment in the Circuit Court. ***Cano v. Village of Dolton***, 250 Ill. App. 3d 130, 620 N.E.2d 1200 (1st Dist. 1993). Such a motion should be granted when there is no genuine issue of material fact and the moving party is entitled to a recommended order in its favor as a matter of law. ***Strunin and Marshall Field & Co.***, 8 Ill. HRC Rep. 199 (1983). The movant's affidavits should be strictly construed, while those of the opponent should be liberally construed. ***Kolakowski v. Voris***, 76 Ill. App. 3d 453, 395 N.E.2d 6 (1st Dist. 1979). The movant's right to a summary decision must be clear and free from doubt. ***Bennett v. Raag***, 103 Ill. App. 3d 321, 431 N.E.2d 48 (2d Dist. 1982).

Respondent, Centers for New Horizons, Inc., is a not-for-profit organization that provides educational, child development, human services, advocacy, and community and economic development programs to residents on the near south side of Chicago.

Respondent's operations are funded largely by contracts and grants from private foundations and from government entities such as the City of Chicago and the State of Illinois.

Respondent hired Complainant, Prentiss K. Sullivan, in March of 1990. Complainant worked as a program manager in Respondent's self-reliance program. In that position, his basic job duties were to recruit, counsel, and mentor young adults in the community. The point of the program was to keep the young people in school, keep them off drugs, and prepare them for employment.

Complainant worked at Altgeld Gardens until mid-1997, when he was transferred to the Wells housing project. After that transfer, Complainant's office was located at the Wells Community Initiative (WCI). The director of WCI was Judith Walker.

In both 1998 and 1999, the contract between Respondent and the City of Chicago required Complainant's program to serve 60 young people per year and to have at least 60% of those young adults attend at least eight months of the program. For 1999, Respondent was required to enroll twenty clients in Complainant's program during the first quarter of the year. The contract required that Respondent provide appropriate documentation of the services provided.

In July of 1998, the City of Chicago audited Complainant's program and determined that the program was not in compliance with the controlling contract. In January of 1999, the City of Chicago determined that Complainant's program had "never operated

during the contract year." Those determinations were especially damaging to Complainant because, at least after his transfer to WCI, he was the only person working on his project.

In early January, 1999, Ethelyn Taylor became Complainant's immediate supervisor. When Taylor asked Complainant to show her his program's records and files, he told her that he had no records and did no work.

On January 14, 1999, Complainant filed a charge of discrimination with the Illinois Department of Human Rights (IDHR). That charge alleged that Respondent had discriminated against Complainant in the terms and conditions of his employment on the basis of his sex.

On January 29, 1999, Judith Walker recommended that Complainant be discharged. That recommendation was overruled by Jamel Magee, Respondent's human resources administrator. Magee noted that Complainant had been with Respondent for years and she wanted to give him some time to adjust to his new supervisor.

On March 12, 1999, Respondent discharged Complainant. Complainant subsequently amended his charge of discrimination to allege sex discrimination and retaliation in regard to the discharge.

IDHR dismissed Complainant's claim regarding unequal terms and conditions of employment on July 6, 2000. As a result, the complaint in this matter contains only allegations regarding Complainant's discharge.

The method of proving such allegations is well established. First, Complainant must establish a *prima facie* showing of discrimination. If he does so, Respondent must articulate a legitimate, non-discriminatory reason for its actions. For Complainant to prevail, he must then prove that Respondent's articulated reason is pretextual. ***Zaderaka v. Human Rights Commission***, 131 Ill. 2d 172, 545 N.E.2d 684 (1989). *See also* ***Texas Dep't of Community Affairs v. Burdine***, 450 U.S. 251 (1981).

The complaint raises two theories, sex discrimination and retaliation. The retaliation theory will be considered first.

To establish a *prima facie* case of retaliation, Complainant would have to prove three elements. He must prove 1) that he engaged in a protected activity, 2) that Respondent took an adverse action against him, and 3) that there was a causal nexus between the protected activity and Respondent's adverse action. ***Carter Coal Co. v. Human Rights Commission***, 261 Ill. App. 3d 1, 633 N.E.2d 202 (5th Dist. 1994). There is no doubt about the first and second elements. The parties agree that Complainant filed a charge of discrimination and that Respondent discharged him. There is a dispute, though, about the third element.

Respondent maintains that Complainant cannot establish a link between the filing of his charge and his discharge. However, the record does not support Respondent's position.

For purposes of a *prima facie* case, a connection can be established by showing that there was a relatively short time

span between the protected activity and the adverse action. ***Ellis and Brunswick Corp.***, 31 Ill. HRC Rep. 325 (1987). Respondent cites a federal case for the proposition that six weeks is too long a period of time for such a connection to be established, but the cited case simply is not controlling in the instant case.

For one thing, although they are considered helpful and relevant, federal cases are not controlling precedent in this forum. ***City of Cairo v. Fair Employment Practices Commission***, 21 Ill. App. 3d 358, 315 N.E.2d 344 (5th Dist. 1974). For another thing, Commission case law contains cases in which periods longer than six weeks were considered short enough to raise an inference of retaliatory intent. (For example, in ***Dudley and Chicago Park Dist.***, ___ Ill. HRC Rep. ___, (1995CF0960, December 7, 1998), a three month period was considered short enough to raise an inference of retaliatory animus.)

Most importantly, though, Respondent seems purposefully vague about the date on which the decision makers learned about Complainant's charge of discrimination. On page 15 of Respondent's reply brief is the cite for the federal case discussed above. On the very same page, Respondent argues that those who made the recommendations to discharge Complainant were unaware of his charge when those recommendations were made. One argument would seem to undercut the other. After all, the time lag means nothing if the decision makers were unaware of the

charge. As a result, there is a genuine issue of material fact regarding the connection between Complainant's protected act and his discharge. Thus, it appears that Complainant may well be able to establish a *prima facie* case of retaliation.

He was less successful on his claim of sex discrimination. To establish a *prima facie* case of sex discrimination in a discharge situation, Complainant would have to prove four elements. He would have to prove 1) that he is in a protected class, 2) that he was meeting Respondent's reasonable expectations, 3) that he was discharged, and 4) that similarly situated persons outside his protected class were not discharged. ***Yarbrough and Ryder Distribution Resources, D.P.D.***, ___ Ill. HRC Rep. ___, (1988CF2549, October 5, 1992). Complainant clearly can establish the first and third elements. On the basis of the existing record, though, it is clear that he cannot establish either of the remaining two elements.

Certainly, Complainant was not meeting Respondent's reasonable expectations. On two separate occasions, in July of 1998 and again in January of 1999, the City of Chicago found that Complainant's program was not in compliance with its contract. In fact, in January of 1999, the city found that Complainant's program had "never operated during the contract year." In response, Complainant does not maintain that he was in compliance. Instead, he claims that he *would* have been in compliance if Respondent had provided him the proper support. In

other words, Complainant does not contest that his program did not comply with its contract. Since operating within the contract's terms is a reasonable expectation for Respondent to have, Complainant's concession that he did not meet those terms is fatal to his attempts to establish the second element of his *prima facie* case.

The fact that Complainant worked for Respondent for years is insufficient to raise a genuine issue of fact on that element. After all, there is no allegation that Respondent was aware of the shortcomings of Complainant's program until the City of Chicago conducted its audit.

Similarly, it means nothing that Complainant's former supervisor, Gregory Washington, wrote a letter of reference for him. The letter in question is dated September 22, 1998, before the city found that Complainant's program was not operating. Moreover, the letter itself indicates that that Washington left Respondent's employ in May of 1995, long before the audit problems surfaced. There is no indication whatsoever that Respondent ever believed that Complainant's performance met Respondent's expectations after the results of that audit were released. Thus, *at the time of the discharge* (and apparently for quite some time before that), Complainant was not meeting his employer's expectations.

Finally, it should be noted that Complainant's immediate supervisor in 1999, Ethelyn Taylor, claims that, when she asked

Complainant to show her his program's records and files, he told her that he had no records and did no work. Because he has not denied making those statements, Taylor's statement stands unrebutted and must be accepted as true. *See* ***Koukoulomatis v. Disco Wheels***, 127 Ill. App. 3d 95, 468 N.E.2d 477 (1st Dist. 1984). In sum, it is overwhelmingly clear that Complainant cannot establish the second element of his *prima facie* case.

Complainant fares no better with regard to the fourth element. There is nothing in the record to raise a genuine issue of fact on whether similarly situated women were retained instead of discharged.

In the affidavit submitted with his response to Respondent's motion, Complainant lists two women whom he believes were treated better than he was. Most of that information, though, is inadmissible.

Complainant alleges that Chrystal Kyles was offered a lesser position after being removed for failure to meet contract guidelines. He also alleges that Kyles turned down that lesser position and was then allowed to resign in lieu of discharge. Complainant also alleges that Carol Aka was offered a lesser position before being allowed to resign. The affidavit gives no indication of the source of Complainant's information.

With regard to motions for summary decision, Supreme Court Rule 191 requires affidavits to be "made on the personal knowledge of the affiants." There is nothing in Complainant's

affidavit to indicate how he knows about Kyles's and Aka's departures. Certainly, there is no proof of "personal knowledge." A document attached to Complainant's affidavit establishes that Kyles was demoted, but does not explain the reasoning. Another document states that Aka resigned, but does not state either that she was offered another position or that the resignation was a forced alternative to discharge. In short, Complainant fails to offer admissible evidence to establish a genuine issue of material fact on whether Kyles and Aka were similarly situated.

It should be noted that Complainant's brief invests a great deal of space discussing his perception that women were treated better than he was in the basic terms and conditions of employment. On the facts of the instant case, that discussion is of no value in establishing a case of sex discrimination.

Complainant's initial charge of discrimination alleged that Respondent had discriminated against Complainant in the terms and conditions of his employment on the basis of his sex. On July 6, 2000, IDHR dismissed the claim regarding unequal terms and conditions. Complainant did not appeal that dismissal. That claim is therefore barred by the doctrine of *res judicata*. *See* ***Steele and Venture Stores, Inc.***, ___ Ill. HRC Rep. ___, (1986SF0276, August 2, 1996). If there was no substantial evidence to support the allegations, mere repetition of those allegations is insufficient to raise a genuine issue of material

fact. Moreover, the fact that Complainant's supervisors were women is meaningless. To find otherwise would be to call into question every personnel decision made by every supervisor, provided that the supervisor and the affected employee were from different demographic groups. In sum, Complainant failed to establish the fourth element of his *prima facie* case.

The failure to establish a *prima facie* case, in and of itself, is not fatal to Complainant's claim. In its submissions, Respondent articulated a legitimate, non-discriminatory reason for its actions. Once such a reason is articulated, there is no need for a *prima facie* case. Instead, at that point, the decisive issue in the case becomes whether the articulated reason is pretextual. ***Clyde and Caterpillar, Inc.***, 52 Ill. HRC Rep. 8 (1989), *aff'd sub nom* ***Clyde v. Human Rights Commission***, 206 Ill. App. 3d 283, 564 N.E.2d 265 (4th Dist. 1990).

At this point in the discussion, Complainant's two theories converge. Respondent's articulated reason applies to both the sex discrimination and the retaliation claims. Simply put, Respondent's articulated reason is that Complainant was discharged for poor performance. The most important performance was that Complainant failed to operate his program in compliance with the contract with the City of Chicago.

To justify denial of Respondent's motion, Complainant would have to raise a genuine issue of material fact on the issue of pretext. ***Pettis and McDonald's Corp.***, ___ Ill. HRC Rep. ___,

(1991CF2143, October 10, 2001). He failed to meet that burden.

As discussed earlier, Complainant conceded that his program was not in compliance with the city's contract. He did not contest the city's audit findings, not even the finding that his program failed to operate during a year of the contract. He offered nothing to indicate any improvement in his performance after the audit findings were announced. Moreover, he offered nothing to indicate that Respondent did not really believe his performance was a severe problem. Accordingly, it is impossible to find fault with Respondent's assertion that his performance was unacceptable when he was fired.

In other words, there is no evidence whatsoever to suggest that Respondent's articulated reason is pretextual. Thus, there is no genuine issue of material fact on the issue of pretext and Respondent's motion for summary decision should be granted.

RECOMMENDATION

Based upon the foregoing, there are no genuine issues of material fact regarding pretext and Respondent is entitled to a recommended order in its favor as a matter of law. Accordingly, it is recommended that the complaint in this matter be dismissed in its entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY:_____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: July 2, 2002